

EARLY CONSULTATION

1. Project Title:

Adoption of a Memorandum of Understanding for Vegetation Management Activities in the Lake Tahoe Region between the California Regional Water Quality Control Board, Lahontan Region and the Tahoe Regional Planning Agency Governing Body.

2. Lead agency name and address:

California Regional Water Quality Control Board, Lahontan Region
2501 Lake Tahoe Blvd., South Lake Tahoe, CA 96150

3. Contact person and phone number:

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4. Project location:

The Lake Tahoe Region of California, including portions of El Dorado and Placer Counties. The "Lake Tahoe Region" is defined by Public Law 96-551, and includes lands in El Dorado and Placer Counties which are tributary to Lake Tahoe. It does not include the Alpine County Portion of the Lake Tahoe watershed, but does include part of the Truckee River HU, between the Lake Tahoe outlet dam and the Bear Creek confluence. The Lake Tahoe Region boundaries are illustrated in Figures 5-3 and 5-4 in the Water Quality Control Plan for the Lahontan Region.

5. Project sponsor's name and address:

California Regional Water Quality Control Board, Lahontan Region
2501 Lake Tahoe Blvd., South Lake Tahoe, CA 96150.

6. Brief Description of Project:

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board), will be adopting a Memorandum of Understanding with the Tahoe Regional Planning Agency (TRPA) regarding the regulation of vegetation management activities within the Lake Tahoe Region (Vegetation Management MOU). Within the Vegetation Management MOU, the TRPA and Lahontan Water Board will agree to designate the TRPA as the lead regulatory and permitting agency for vegetation management activities in the Lake Tahoe Region.

7. Agencies Involved:

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) is responsible for protecting water quality in the Lahontan Region, which is defined by Water Code section 13200, subdivision (h). The authority of the Lahontan Water Board to regulate activities for the purpose of water quality protection is provided by the federal Clean Water Act (CWA), the Water Code, the Water Quality Control Plan for the Lahontan Region (Basin Plan), State Water Resources Control Board policies, and other federal and state laws and regulations.

The Lahontan Water Board has a statutory obligation under the Water Code to prescribe waste discharge requirements for activities that could affect the quality and beneficial uses of waters in the State within the Lake Tahoe Region and the greater Lahontan Region, pursuant to the Water Code section 13263, subdivision (a). The Lahontan Water Board has identified timber harvest and vegetation management activities as having a potential effect on water quality. Timber harvesting and vegetation management activities with the greatest potential to impact surface waters include: felling, yarding, and hauling of trees; road construction, reconstruction, and decommissioning; watercourse crossing construction, reconstruction, failure, and removal; slash removal and control burning; timber salvage logging following wildfire events; and herbicide applications. These activities can result in discharge, or threatened discharge, of waste (including, but not limited to, soil, silt, clay, and organic debris) into waters of the State, thereby potentially impacting water quality and beneficial uses of those waters. "Waste" is defined pursuant to Water Code section 13050, subdivision (d) and "waters of the State" is defined pursuant to Water Code section 13050, subdivision (e).

Water Code section 13260, subdivisions (a) and (c) require any person discharging waste, or proposing to discharge waste, that could affect the quality of waters of the State to file a report of waste discharge. As stated above, Water Code section 13263, subdivision (a) requires the Lahontan Water Board to prescribe waste discharge requirements for activities that could affect the quality and beneficial uses of waters of the State within the Lahontan Region. The provisions of Water Code sections 13260, subdivision (a) and (c); section 13263, subdivision (a); or section 13264, subdivision (a) may be waived by the Lahontan Water Board for a specific discharge or type of discharge if the Lahontan Water Board determines, after any necessary meetings, that the waiver is consistent with the Water Quality Control Plan for the Lahontan Region (Basin Plan) and is in the public interest pursuant to Water Code section 13269.

The Tahoe Regional Planning Agency (TRPA) was established in 1969, and is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal Govt. Code 66801; NRC 277.200) to regulate activities that may have a substantial effect on natural resources of the Lake Tahoe Region. To protect these resources, the Compact directs TRPA to establish and ensure attainment of environmental standards for water quality, air quality, noise, recreation, soil conservation, wildlife habitat, vegetation preservation, scenic quality, and fisheries.

The TRPA, and the Lahontan Water Board, are responsible for implementing the bi-state Water Quality Management Plan for the Lake Tahoe Region ("208" Plan) and the TRPA is recognized as one of the implementing agencies for certain provisions of the Water Quality Control Plan for the Lahontan Region (Basin Plan) applicable to the Lake Tahoe Region.

In fulfilling its responsibilities, the TRPA regulates tree removal activities for environmental and aesthetic impacts. Individuals and agencies proposing to conduct vegetation management and tree removal activities within the Lake Tahoe Region must obtain approval and a tree removal permit from the TRPA, unless the TRPA has entered into a memorandum of understanding (MOU) establishing another entity as capable of permitting or proceeding with certain types of vegetation management activities.

8. Proposed Memorandum of Understanding for Vegetation Management Activities in the Lake Tahoe Region:

The Lahontan Water Board, and the TRPA are both responsible for protecting water quality and beneficial uses of waters of the State within the Lake Tahoe Region by regulating activities which may have an adverse effect on these resources. In fulfilling its responsibilities, the Lahontan Water Board has developed and implemented a program for regulating timber harvest and vegetation management activities in the Lake Tahoe Region using the Timber Waiver. Likewise, the TRPA regulates timber harvest and vegetation management activities through a tree removal permitting system and memoranda of understanding with land management agencies and fire districts. These systems have been found to be effective in ensuring impacts to water quality are avoided, the beneficial uses of waters of the State are protected, and that all feasible mitigation measures are implemented.

However, the vegetation management permitting systems of these two agencies are duplicative in that they implement and enforce the same or similar regulations and prohibitions with regards to water quality protection. Under the current regulatory systems of the Lahontan Water Board and the TRPA, project proponents must have approval from both agencies, typically under a Timber Waiver (Lahontan Water Board) and a tree removal permit (TRPA). To address these duplicative systems, the Lahontan Water Board and TRPA are considering indentifying the TRPA as the sole agency to regulate vegetation management activities in the Lake Tahoe Region and ensure the same level of water quality protection.

Therefore, in the interest of limiting duplicative effort and agency investment, and in the interest of the regulated community, the TRPA and the Lahontan Water Board are pursuing a cooperative approach to regulating vegetation management activities in the Lake Tahoe Region through the adoption of a Memorandum of Understanding for Vegetation Management Activities in the Lake Tahoe Region (Vegetation Management MOU). Vegetation management activities will be defined within the Vegetation Management MOU.

The definition of **vegetation management activities** for the purpose of this project is:

“Vegetation Management Activities” includes all activities related to the management of vegetation for the purposes of fuel reduction, forest thinning, establishment of shaded fuel breaks, and/or environmental improvement (such as forest enhancement, riparian enhancement, and aspen stand enhancement). These activities include the cutting or removal of trees and vegetation, together with all the work incidental thereto, including, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, or beds for the falling of trees; burned area rehabilitation, fuels hazard reduction, site preparation that involves disturbance of soil or burning of vegetation, and herbicide application. Vegetation management activities do not include preparatory tree marking, surveying or road flagging.

The intent of the Vegetation Management MOU is to designate the TRPA as the lead permitting and review agency in the Lake Tahoe Region for vegetation management activities. To do this, the Lahontan Water Board will conditionally waive the requirement of project proponents to file a report of waste discharge for vegetation management activities that have been reviewed and permitted by the TRPA pursuant to Water Code section 13269. To ensure that this waiver is in the public interest and consistent with the Water Quality Control Plan for the Lahontan Region (Basin Plan) the Lahontan Water Board will specify conditions of applicability of the waiver within the Vegetation Management MOU pursuant to Water Code section 13269, subdivision (a)(1).

A provision of the Vegetation Management MOU may include Lahontan Water Board in the review of vegetation management activities within the Lake Tahoe Region for projects that may have a potentially significant impact to water quality or beneficial uses of waters of the State. This determination would be made based on a list of project thresholds. If any of the listed thresholds are exceeded by a proposed project, then the TRPA will notify Water Board staff early in the application or project consultation period of the vegetation management project proposal.

The Vegetation Management MOU will not limit the existing authorities of the Lahontan Water Board to ensure compliance with any applicable federal or state laws, regulations, policies, or agreements, including but not limited to, the ability to take enforcement actions.

Once comments from this early consultation have been received and considered, the proposed Memorandum of Understanding between the Lahontan Water Board and the Tahoe Regional Planning Agency along with the Initial Study and Negative Declaration will be made available for a 30-day public review and comment period prior to consideration for adoption by the Lahontan Water Board, anticipated at the October 7-8, 2008 Lahontan Water Board meeting.

For more information and details on what will be included within the Vegetation Management MOUs, please refer to Table 3, *Proposed MOU between the Tahoe Regional Planning Agency and the Lahontan Water Board Regarding Vegetation Management Activities in the Lake Tahoe Region*.

9. Ensuring compliance with the Timber Waiver and the Vegetation Management MOU:

The proposed Vegetation Management MOU will conditionally waive the requirement of project proponents or land owners in the Lake Tahoe Region from having to file a report of waste discharge or receive waste discharge requirements from the Lahontan Water Board for vegetation management activities if the proposed activities meet the eligibility criteria and conditions stated within the Vegetation Management MOU pursuant to Water Code section 13269, subdivision (a)(2). One of the conditions of the waiver, or Vegetation Management MOU, will be that eligible projects must have been reviewed and permitted by the Tahoe Regional Planning Agency (TRPA), or permitted by an agency capable of permitting or proceeding with certain types of vegetation management activities established in a MOU with the TRPA.

The Lahontan Water Board may revoke individual project applicability under the Vegetation Management MOU if project activities and discharges do not comply with the conditions and eligibility criteria of the Vegetation Management MOU. Once project applicability under the Vegetation Management MOU has been revoked, the project proponent shall file a report of waste discharge, containing the information required by the Lahontan Water Board, in order to proceed with activities that would result in the discharge, or threatened discharge, of waste that could affect the quality of waters of the state, pursuant to Water Code section 13260, subdivision (a).

Other potential enforcement actions that may be taken by the Lahontan Water Board include: (1) the issuance of a Notice of Violation, which is an informal enforcement action which notifies the discharger of the violation of a waiver or MOU condition and the reasonably expeditious time within which compliance must be achieved to avoid further enforcement; (2) Notices to Comply; (3) Cleanup and Abatement Orders; (4) Cease and Desist Orders; (5) Time Schedule Orders; (6) Administrative or Judicial Civil Liability Orders; or (7) Referral to the California Attorney General's Office for appropriate legal action.

The Lahontan Water Board may pursue any of the above enforcement actions if conditions or eligibility criteria of the Vegetation Management MOU are not met, and/or if impacts or threatened impacts to water quality or beneficial uses to waters of the State are observed.

10. Duration of the Proposed Project:

Pursuant to Water Code section 13269, subdivision (a)(2) this Vegetation Management MOU (waiver) may not exceed five years in duration and may be terminated at any time by the State Water Resources Control Board or by a California regional water quality control board.

Therefore within five years of adoption of this Vegetation Management MOU, or upon termination, whichever is sooner, the Lahontan Water Board may either renew, terminate, or revise and adopt a new conditional waiver, or Vegetation Management MOU, for vegetation management activities in the Lake Tahoe Region pursuant to Water Code section 13269, subdivision (a)(2).

11. Surrounding Land Uses and Setting:

The Lake Tahoe Region of California includes portions of El Dorado and Placer Counties. The "Lake Tahoe Region" is defined by Public Law 96-551, and includes lands in El Dorado and Placer Counties which are tributary to Lake Tahoe. It does not include the Alpine County Portion of the Lake Tahoe watershed, but does include part of the Truckee River HU, between the Lake Tahoe outlet dam and the Bear Creek confluence. The Lake Tahoe Region boundaries are illustrated in Figures 5-3 and 5-4 in the Water Quality Control Plan for the Lahontan Region.

The Lake Tahoe Region is comprised of about 500 square miles of land both within California and Nevada, of which approximately 70% is within California. Approximately 40% of the Lake Tahoe watershed is occupied by Lake Tahoe itself. The majority of the land surface within the Lake Tahoe Region is forested land, mainly owned and managed by the Lake Tahoe Basin Management Unit. Other large land managers within California portion of the Lake Tahoe Region include the California Department of Parks and Recreation, the California Tahoe Conservancy, and private ski resort companies. Land uses within the Lake Tahoe Region recreation and some urban development and grazing. The Lake Tahoe Region has a legacy of commercial forestry and some mining.

Lake Tahoe is a designated Outstanding Natural Resource Water, which is renowned for its extraordinary clarity and purity, and deep blue color. Since the 1960s, Lake Tahoe has become impaired by declining transparency and increased phytoplankton productivity due to increased sediment and nutrient loading attributable to human activities. Under federal and state antidegradation regulations and guidelines, no further degradation of Lake Tahoe can be permitted, except for limited and temporary circumstances.

12. Other Public Agencies Whose Approval is Required:

Receiving permission to proceed with vegetation management activities under this proposed Memorandum of Understanding does not preclude the requirement of the project proponent, land owner, or land manager from obtaining other required permits from other local, county, state, and/or federal agencies. Vegetation management activities in the Lake Tahoe Region may need to obtain other permits. On private timberlands, Cal Fire is the lead agency for issuing permits to timberland owners and operators harvesting timber within the Lahontan Region. On lands managed by the US Forest Service, approval to conduct timber harvest and vegetation management

activities is only granted by the US Forest Service after preparing environmental documents to comply with the National Environmental Policy Act (NEPA). On lands owned and/or managed by the State of California (i.e. California Department of Parks and Recreation, and the California Tahoe Conservancy, California Department of Transportation), approval to conduct timber harvest and vegetation management activities is only granted by the State land management agency after environmental analysis in compliance with the California Environmental Quality Act (CEQA) is completed.

13. Environmental Factors Potentially Affected:

The potential effects this project may have on the environmental factors listed below will be considered by Lahontan Water Board staff in preparing the Initial Study for this project.

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| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use / Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation / Traffic |
| <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance | |

DETERMINATION:

Prior to determination, the lead agency shall consult with all responsible and trustee agencies pursuant to Public Resources Code section 21080.3. Therefore a determination will be made once comments from this early consultation have been received and considered and this initial evaluation has been completed.

14. Issues:

These issues are currently being considered by Lahontan Water Board staff. Agency and public input are encouraged.

1. What role, if any, should the Lahontan Water Board have in reviewing vegetation management activities permitted by the TRPA or any of its MOU partners?
2. What type of information should TRPA report to the Lahontan Water Board to verify adequate protection of water quality?
3. What role, if any, should the Lahontan Water Board have in auditing TRPA's permitting efforts to verify conformance with MOU agreements?

Available Documents:

The existing Timber Waiver, Resolution No. R6T-2007-0008, may be found at the following webpage:

http://www.waterboards.ca.gov/lahtontan/water_issues/programs/waste_discharge_requirements/timber_harvest/index.shtml

The existing *Memorandum of Understanding (MOU) Between the California Regional Water Quality Control Board, Lahontan Region, and the Tahoe Regional Planning Agency* (2003), may be found at the following webpage:

http://www.waterboards.ca.gov/lahtontan/water_issues/programs/waste_discharge_requirements/timber_harvest/index.shtml